

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6658**

**BILL NUMBER:** SB 148

**NOTE PREPARED:** Jan 8, 2010

**BILL AMENDED:**

**SUBJECT:** Corrections and Developmental Disabilities.

**FIRST AUTHOR:** Sen. Lawson C

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. It requires the Department of Correction to maintain information concerning offenders who are persons with developmental disabilities, and provides that an offender may not be assigned to a lower credit class for the violation of a rule if the violation of the rule is solely attributable to the fact that the offender is a person with a known developmental disability.
- B. It requires that a presentence investigation must include certain mental health information, including whether the person is a person with a developmental disability.
- C. It requires the Bureau of Developmental Disabilities Services to ensure that an entity approved to provide adult day services, day habilitation, or vocational services is accredited by a specified organization.

**Effective Date:** July 1, 2010.

**Explanation of State Expenditures:** *Assignment to Lower Credit Class* – This bill could result in potential new costs of between \$35,000 and \$850,000. The bill does not mandate that Department of Correction (DOC) test the diagnostic levels of all DOC offenders. But because DOC would be prohibited from reassigning offenders to lower credit classes if DOC knows that an offender is developmentally disabled, at a minimum, DOC would likely need to administer diagnostic tests to offenders who are reassigned credit levels. Any added costs would depend on whether DOC has educational psychologists currently on staff and whether these psychologists could be reassigned to perform these diagnostic assessments.

In future years, the costs for DOC should be minimal once probation departments begin to include diagnostic assessments in their preliminary sentence investigations.

If an offender's credit class is not downgraded, the offender may be able to be released at an earlier date, thus reducing the pressure on DOC's adult facilities. The average cost that would be avoided might be about \$35 per day, the cost of housing a DOC offender under contract in a county jail.

To estimate the potential range of new costs, LSA used two measures. First, LSA compared the credit class of 16,642 offenders who were housed in DOC facilities on December 31, 2008, and December 31, 2009. Of these offenders, 81 had been reassigned from Class 1 Credit Time to Class 2 or 3.

<b>Change in Credit Class of 16,642 DOC Offenders Between Dec. 31, 2008 and Dec. 31, 2009</b>				
<b>Credit Class</b>	<b>Downgrade</b>	<b>No Change</b>	<b>Upgrade</b>	<b>Grand Total</b>
1	76	15,175		15,251
2	5	171	677	853
3		107	431	538
Grand Total	81	15,453	1,108	16,642

In the other measure, between December 1, 2008, and December 1, 2009, DOC reported that 2,635 offenders had a disciplinary hearing in which they were found guilty. Whether they would lose credit time for these violations was not available. Of these offenders, 2,117 had either less than a high school diploma or no information in their records. If at a minimum DOC tested these offenders, the added costs could be around \$850,000 if DOC would have to contract with an outside psychologist. The following illustrates what the potential costs would be.

<b>Cost of Testing DOC Offenders Committed</b>					
<b>Offenders Affected</b>		<b>Number of Hours per Subject</b>		<b>Cost per Hour</b>	<b>Total Costs</b>
81	x	2	x	\$200	= \$32,400
2,117	x	2	x	\$200	= \$846,800
Source for Hours per Subject and Cost per Hour: Steven Ross, PsyD, HSPP					

Background– DOC reports that the most prevalent violations are shown in the table below between December 1, 2008, and December 1, 2009. The number that resulted in reduction from Class I to Class 2 or Class 3 for good time credits was not known.

Violation	Number of Offenses
Refusing an Order	5,282
Entering or Remaining in an Unauthorized Area	4,459
Violating Facility Rule	3,736
Refusing an Assignment	3,137
Disruptive Behavior	2,097
Unauthorized Possession of Food Items	1,860

IC 35-50-6-3 specifies the credit time that each credit class earn. Class I offenders earn one day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing. Class II offenders earn one day of credit time for every two days the person is imprisoned for a crime or confined awaiting trial or sentencing. Class III offenders earn no credit time.

*Bureau of Developmental Disabilities Services* – This provision will have no fiscal impact for the following reasons:

1. The bill will require service providers who are currently not accredited through a listed accrediting authority to seek accreditation. Accreditation fees will be paid by the provider.
2. DDRS does not necessarily contract with these providers, but does provide an annual budget to individuals with developmental disabilities.
3. If service providers raise service rates to cover costs of accreditation, it is at the service consumer's discretion to receive less services for more money or go to service providers who charge less for services.
4. Any increases in service rates will not affect DDRS expenditures.

#### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Presentence Investigation Reports* – This bill could add new costs to counties, depending on the number of persons who would be subject to diagnostic testing.

The added costs will depend on whether the information on the defendant's school and mental health history has already been admitted into evidence during the criminal proceeding. In 2008, about 3% of all felony and murder cases were disposed by trial before a jury or a judge. In these cases, a defendant's intellectual impairments and mental health history would likely be included in evidence and on the public record.

About 77% of the felony cases in 2008 that would need presentence investigations were disposed by a guilty plea. In these proceedings the background of the defendant is not presented to the court in a public record, so the probation officers who prepared the presentence investigation reports would not be able to find this information in any background material in the court records.

If the sentencing courts are required to order and pay for the these tests, the following table presents an estimate of the costs. The money would presumably come from county general funds.

Cost of Providing Testing for Presentence Investigation Reports							
Number of Presentence Investigations (1)		Number of Hours per Subject (2)		Cost per Hour (2)		Percent of Cases Disposed by Guilty Plea (3)	Total Costs (In Millions)
24,596	x	1.5	x	\$200	x	77%	= \$5.7
Notes: (1) 2008 Probation Report prepared by the Division of State Court Administration (2) Source: Steven Ross, PsyD, HSPP (3) 2008 Indiana Judicial Report (see chart below)							

Initial costs for counties could be high to administer these tests, but future costs could be lower because adult felons have a generally high recidivism rate. The Indiana State Police report that DNA tests for offenders who have been convicted of felonies have slightly declined because many of the persons convicted have DNA samples already in the system due to prior convictions.

Background – Upon entering a conviction, the court sets a date for sentencing within 30 days. The court can extend the date if good cause is shown (IC 35-38-1-2(b)). A defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court (IC 35-38-1-8).

Felony Cases Disposed in 2008					
	Disposed	Pled	Pct. Pled	Jury or Bench Trial	Pct. Trial
Murder	199	77	39%	103	52%
Felony (Unclassified)	286	112	39%	5	2%
Class A felony	2,715	2,071	76%	218	8%
Class B felony	5,872	4,749	81%	298	5%
Class C felony	9,763	7,906	81%	316	3%
Class D felony	50,135	37,925	76%	961	2%
Totals	68,970	52,840	77%	1,901	3%

### **Explanation of Local Revenues:**

**State Agencies Affected:** DOC; Bureau of Developmental Disabilities Services.

**Local Agencies Affected:** Probation offices of courts with criminal jurisdiction.

**Information Sources:** DOC Offender Information System; 2008 Indiana Judicial Report; 2008 Indiana Probation Report; Steven Ross, PsyD, HSPP.

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